

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

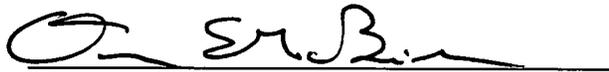
Illinois Consolidated Telephone Company :  
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Petition for Consent and Approval of an : 11-0444  
Equipment Location Agreement with :  
Illinois Network Alliance, LLC pursuant to :  
Section 7-102 of the Public Utilities Act :

ILLINOIS CONSOLIDATED TELEPHONE COMPANY  
SUBMITS AGREED DRAFT ORDER

Illinois Consolidated Telephone Company ("ICTC") hereby submits the attached Agreed Draft Order.

ICTC is authorized to state that the Agreed Draft Order has been reviewed by and is acceptable to the Commission Staff Witnesses.

Respectfully submitted,



Owen E. MacBride  
Schiff Hardin LLP  
233 South Wacker Drive, Suite 6600  
Chicago, IL 60606  
(312) 258-5680  
[omacbride@schiffhardin.com](mailto:omacbride@schiffhardin.com)

Attorney for  
Illinois Consolidated Telephone Company

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**Illinois Consolidated Telephone Company** :  
: :  
: :  
**Petition for consent and approval of an Equipment Location Agreement with Illinois Network Alliance, LLC pursuant to Section 7-102 of the Public Utilities Act.** : **11-0444**  
:  
:

**AGREED DRAFT ORDER**

By the Commission:

**I. PROCEDURAL HISTORY**

On May 20, 2011, Illinois Consolidated Telephone Company (“ICTC” or “Petitioner”) filed a verified Petition pursuant to Section 7-102(A)(c) of the Illinois Public Utilities Act (the “Act”), 220 ILCS 5/7-102(A)(c), requesting that the Illinois Commerce Commission (“Commission”) grant consent and approval of an Equipment Location Agreement (the “ELA”) with Illinois Network Alliance, LLC (“INA” or “Licensee”). The ELA, submitted as Attachment 1 to the Petition, provides for INA to place certain telecommunications equipment in space provided by ICTC (the “Space”) in a building owned by ICTC located at 1501 Charleston Avenue, Mattoon, Illinois (the “Premises”).

The Commission notes that on May 20, 2011, ICTC and INA also made a separate filing with the Commission of a Joint Petition for approval, pursuant to Section 252(e) of the Telecommunications Act of 1996, 47 U.S.C. §252(e), of an interconnection agreement between ICTC and INA, as further discussed later in this Order. The interconnection agreement is being considered in a separate docket, Docket 11-0443.

Pursuant to notice as required by law and the rules and regulations of the Commission, this matter was set for prehearing conference before a duly authorized Administrative Law Judge (“ALJ”) of the Commission at its offices in Springfield, Illinois, on June 23, 2011. Petitioner and the Staff Witnesses (“Staff”) each appeared by counsel. Pursuant to a schedule established at the June 23, 2011 hearing, Staff filed the Verified Statement of Mr. A. Olusanjo Omoniyi on July 6, 2011. On July XX, 2011, the ALJ marked the record “Heard and Taken.” On July YY, 2011, Petitioner filed a Draft Order that had been agreed to by Staff.

**II. PETITIONER’S POSITION AND THE PROPOSED ELA**

ICTC, an Illinois corporation, provides non-competitive telecommunications

services as defined by Section 13-210 of the Act, 220 ILCS 5/13-210, and is a telecommunications carrier as defined in Section 13-202 of the Act, 220 ILCS 5/13-202.

The ELA consists of a basic Agreement with four Exhibits and two Addenda. Exhibit A describes other services and facilities, such as AC-DC Power, Environmental and miscellaneous, that will be provided to INA in connection with its use of the Space. Exhibit B sets forth the rates, terms and conditions for "Escort/Hands and Eyes Services" that ICTC will provide to INA if requested by INA. The "Escort/Hand and Eyes Services" refer to physical access support services that ICTC will provide to INA for INA's maintenance of its equipment on the Premises. Exhibit C is a diagram that shows the Space that will be provided for INA's equipment in the Premises. Exhibit D describes the Space and the Recurring Monthly Service Fees and Non-recurring Charges that will be paid by INA for the use of the Space and for certain associated ancillary services rendered pursuant to the ELA, including AC Electric Power Usage. The Non-recurring Charges include charges for Cabinet and DC Power Installation and for Administration, Project Management, Engineering and Legal for preparation of the Space. Exhibit D contemplates that INA will use up to 12.50 square feet for two cabinets and that each cabinet will use 6.25 square feet. Addendum 1 is reserved, and Addendum 2 is a Service Request Form for INA to use when modifying or canceling the Space (per Exhibit D).

In accordance with Section 1 of the ELA, INA agrees to use the Space "only for placement and operation of Licensee Equipment that Licensee will use exclusively (i) in conjunction with access or private line services ordered by Licensee or its customers from ICTC's tariffs, (ii) to deliver Licensee's or its customers' telecommunications traffic to ICTC for delivery over ICTC's local exchange facilities to end users in ICTC's local exchanges, or (iii) to receive from ICTC's local exchange facilities telecommunications traffic originated by end users in ICTC's local exchanges. Telecommunications traffic delivered by Licensee to the Licensee Equipment in the Space shall be traffic to be delivered to end users in ICTC local exchanges using ICTC local exchange facilities or ICTC facilities leased by Licensee or Licensee's customers."

The ELA has an Initial Term of five years. As provided in Section 2 of the ELA, upon expiration of the Initial Term, the ELA will automatically be renewed for successive one-year Renewal Terms, unless one of the parties, at least 180 days prior to expiration of the Initial Term or a Renewal Term, delivers notice of termination to the other party. Section 3(a) of the ELA provides that the Recurring Monthly Service Fees shown in Exhibit D shall be increased cumulatively by three percent effective on the first day of each Renewal Term.

Based on the amount of Space being provided to INA and the Recurring Monthly Service Fees specified in Exhibit D of the ELA, the annual consideration to ICTC during the Initial Term of the ELA will be approximately \$37,600, plus charges for AC Electrical Power Usage and charges for any "Escort/Hands and Eyes Service" provided by ICTC to INA. Petitioner stated that the charges, terms and conditions in the ELA are the result of arms-length bargaining between ICTC and INA. Petitioner further stated that

the charges in the ELA are sufficient to cover ICTC's revenue requirement associated with the amount of floor space and cabling, number of cabinets and power equipment and generation facilities provided, the Electrical Power Usage costs, and the labor costs for "Escort/Hand and Eyes Services."

ICTC stated that, under Section 7-102(A)(c) of the Act, consent and approval of the Commission must be obtained, unless waived or exempted, for a lease of a public utility's franchises, licenses, permits, plant, equipment business, or property. Further, pursuant to Section 13-601 of the Act, the provisions of Section 7-102 are applicable to telecommunications carriers, such as ICTC, that provide noncompetitive telecommunications services. Additionally, Section 7-102(D) of the Act authorizes the Commission to promulgate rules waiving the filing and necessity for approval of leases, easements and licenses involving a consideration or rental of not more than \$30,000 for utilities with gross revenues in excess of \$50,000,000, and the Commission has adopted such a rule in 83 Ill. Admin. Code §105.40(a). However, because the annual consideration to ICTC during the Initial Term of the ELA will be at least \$37,600, consent and approval of the Commission to the ELA is required.

ICTC stated that the public will be inconvenienced by ICTC's entry into and performance of the ELA. ICTC states that it will receive compensation, which was determined through arms-length negotiations, for the provision of the Space and of associated services to Licensee. ICTC stated that the placement and operation of Licensee's equipment in the Space, and the provision of the associated services by ICTC to Licensee as specified in the ELA, will not interfere with ICTC's performance of its responsibilities as a certificated local exchange carrier and interexchange carrier in Illinois, and will not adversely affect the quality of the telecommunications services that ICTC provides to its own customers.

### **III. STAFF POSITION**

On July 6, 2011, Staff filed the Verified Statement of A. Olusanjo Omoniyi. Mr. Omoniyi summarized the provisions of the ELA. He noted that the annual consideration to ICTC during the Initial Term of the ICA will be approximately \$37,600, plus charges for Electrical Power Usage and charges for any "Escort/Hands and Eyes Services" provided to INA. In addition, INA is paying one-time (non-recurring) charges totaling \$9,680 for preparation of the Space. After the Initial Term of five years, INA is subject to a three percent per year cumulative increase in annual rent, the recurring charges, and at least one non-recurring charge. Mr. Omoniyi stated that it is undisputed that the ELA is not exempt from Commission approval under 220 ILCS 5/7-201(D). He stated that the issue to be addressed is whether the Petition should be reasonably granted because the public is inconvenienced by the ELA and whether any conditions are needed to be imposed to protect the public and its interests, pursuant to 220 ILCS 5/7-102(C).

Mr. Omoniyi stated that, upon review of the Petition and the ELA, Staff concluded that ICTC and INA would be interconnected telecommunications carriers in the event the ELA is approved. He stated that the ELA contemplated locating INA's equipment on

the Premises of ICTC and interconnecting INA's telecommunications equipment with ICTC's telecommunications equipment for the eventual exchanging of telecommunications traffic, even though INA is not expected to be the originating or terminating carrier of the telecommunications traffic. He stated that, if the Commission approves the Petition, it will be approving, at least indirectly, the interconnection of the two carriers and the locating of INA's equipment on ICTC's property. Mr. Omoniyi noted that ICTC and INA filed a Section 252 negotiated interconnection agreement in Docket 11-0443 as required by 47 U.S.C. §252(a)(1) and (c)(2). He stated that, upon review of the interconnection agreement filed in Docket 11-0443, Staff concluded that, upon approval of the interconnection agreement, the parties' actions will have strengthened the centrality of negotiated agreements under the federal scheme of the Telecommunications Act of 1996. Mr. Omoniyi noted that at the time of his Verified Statement, the Commission had completed its hearing on the pending interconnection agreement and there did not appear to be any issue outstanding to forestall its approval.

With respect to whether the public will be inconvenienced by the ELA and whether any conditions need to be imposed, Mr. Omoniyi stated that Staff reviewed the ELA along with the interconnection agreement currently pending in Docket 11-0443 and concluded: (1) There is no subsidization by ICTC's ratepayers of the expenses arising from INA's use of the ICTC facilities, and the pricing under the ELA is at or above the cost floor and covered the revenue requirement for the amount of floor space, cabinets, cabling, etc. leased. (2) There will be no adverse impact from the ELA to ICTC's business and operations or to the service quality provided by ICTC to its customers. (3) Allowing INA to place its equipment in the building facilitates the delivery of traffic of INA's carrier customers into ICTC's local exchange network for delivery to end user customers located in ICTC local exchanges. (4) Other carriers would be able to obtain an agreement similar to the ELA, assuming there was uncommitted floor space available in the ICTC Mattoon facility. Based on these reasons, Mr. Omoniyi concluded that the Petition is in compliance with the Section 7-102 requirements and should be approved, and that no conditions on the Commission's approval need to be imposed to protect the public interest. He concluded that the public will be inconvenienced by the approval of the Petition. He recommended that the Section 7-102 Petition be approved and that no additional conditions need to be imposed to protect the public interest.

#### **IV. COMMISSION CONCLUSION, FINDINGS AND ORDERING PARAGRAPHS**

Based on its review of the record, including the Verified Petition and the Staff Verified Statement, the Commission finds that the public will be inconvenienced by approval of the proposed ELA, and that consent and approval of the ELA should be granted pursuant to Section 7-102 of the Public Utilities Act.

The Commission, having reviewed the record and being fully advised in the premises, is of the opinion and finds that:

- (1) Petitioner, Illinois Consolidated Telephone Company, is an Illinois corporation engaged in furnishing telecommunications service in Illinois

and, as such, is a telecommunications carrier as defined in Section 13-202 of the Public Utilities Act;

- (2) the Commission has jurisdiction over ICTC and the subject matter herein;
- (3) Petitioner has negotiated the ELA, Attachment 1 to the Petition, pursuant to which Illinois Network Alliance, LLC will be authorized to place certain telecommunications equipment in Space provided in Premises owned by ICTC at 1501 Charleston Avenue, Mattoon, Illinois, and will receive certain other services in connection therewith as provided in the ELA;
- (4) the public will be inconvenienced by the transactions set forth in the ELA, and consent and approval of the Commission to the ELA should be granted.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Petition of Illinois Consolidated Telephone Company for consent and approval of the Commission to the ELA, Attachment 1 to the Petition, pursuant to Section 7-102(A)(c) of the Public Utilities Act, and performance of the transactions provided for in the ELA, is hereby granted.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Admin. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this \_\_\_ day of \_\_\_\_\_, 2011.

(SIGNED) DOUGLAS P. SCOTT

Chairman

## CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he caused the foregoing Agreed Draft Order to be served on each of the persons on the attached Service List by e-mail on July 8, 2011.

/s/ Owen E. MacBride  
Owen E. MacBride  
Attorney for Illinois Consolidated  
Telephone Company

Michael Wallace  
Administrative Law Judge  
Illinois Commerce Commission  
527 E. Capitol Ave.  
Springfield, IL 62701  
[mwallace@icc.illinois.gov](mailto:mwallace@icc.illinois.gov)

James Weging  
Office of General Counsel  
Illinois Commerce Commission  
160 N. LaSalle St., Ste. C-800  
Chicago, IL 60601-3104  
[jweging@icc.illinois.gov](mailto:jweging@icc.illinois.gov)

Sanjo Omoniyi  
Case Manager  
Illinois Commerce Commission  
160 N. LaSalle St., Ste. C-800  
Chicago, IL 60601  
[somoniyi@icc.illinois.gov](mailto:somoniyi@icc.illinois.gov)

Michael Shultz  
Vice President  
Regulatory and Public Policy  
Illinois Consolidated Telephone Company  
121 S. 17th St.  
Mattoon, IL 61938  
[Michael.shultz@consolidated.com](mailto:Michael.shultz@consolidated.com)